

THE DIGITAL AGE COMMUNICATIONS ACT

Section-By-Section

TITLE I – REGULATORY FRAMEWORK

Sec. 101 Findings and Policy

- The 1996 Act was designed to facilitate a transition to a more competitive communications market.
- Since 1996, rapid developments in technology and the marketplace have further increased competition in communications markets and will continue to facilitate additional competition.
- Unnecessary regulation deters investment and development in communications services
- It shall be the policy of the United States to promote the availability of communications services for all Americans.
- Economic regulation should be presumed unnecessary absent circumstances that demonstrate the existence of a significant threat of abuse of market power that poses a substantial and nontransitory risk to consumer welfare.
- Decisions by the Federal Communications Commission should be based on jurisprudential principles grounded in market-oriented competition analysis such as those commonly employed by the Federal Trade Commission and the Department of Justice and the antitrust laws of the United States.

Sec. 102 Prohibition of unfair methods of competition

- Declares unlawful unfair methods of competition and unfair or deceptive practices in or affecting communications networks.
- Gives the FCC rulemaking authority to define with specificity the acts or practices that constitute unfair methods of competition or deceptive acts or practices based on a showing of clear and convincing evidence that marketplace competition is not adequate to protect consumer welfare, is likely to cause substantial injury to consumers, is not avoidable by consumers themselves, and is not outweighed by countervailing benefits to consumers or to competition.
- All rules promulgated by the FCC will sunset after 5 years unless the FCC can show that it continues to be necessary to adequately protect consumers from substantial injury.

Sec. 103 Actions for complaints

- Gives the FCC authority to hear complaints from any party injured by a violation and award damages to that injured party.

Sec. 104 Time limits on Commission action

- Gives FCC 120-Day time limit for action for applications with supporting testimony
- 210-Day limit for applications without supporting testimony.
- Applicants can waive the time limits
- In particular cases, the FCC can extend the time limits for no more than 90 days.

Sec. 105 Additional powers of the Commission

- Gives the FCC investigative powers over the business practices of communications networks and services
- Requires the FCC to present Congress with an annual report and recommendations for needed legislation.

TITLE II – TRANSFER OR ASSIGNMENT OF PERMITS, LICENSES, OR CERTIFICATES

Sec. 201 Findings

- The current method by which the FCC reviews mergers is in need of reform
- The FCC uses its authority under the nonspecific public interest standard to impose terms and conditions on mergers that are unrelated to any competitive impacts the merger would have.

Sec. 202 Modification of authority to deny or condition licenses

- During merger reviews the FCC may not deny an application unless it would violate the Communications Act or the Commission’s rules.
- Prohibits the FCC from conditioning merger approvals except to the extent necessary to ensure compliance with the Commission’s rules and regulations
- Requires the FCC to complete their reviews within 90 days, unless the applicant requests an extension

TITLE III – UNIVERSAL SERVICE

Sec. 301 Applicability of Communications Act of 1934

- Three years after the date of enactment, sections 214(e) and 254 of the Communications Act are repealed.

Sec. 302 Principles of Universal Service

- Bases Universal Service (basic electronic communications services) on 4 basic principles:
 - Affordability - for low income and high cost households
 - Efficiency – should burden the economy no more than necessary
 - Neutrality – shall not discriminate in favor of or against any company or technology
 - Transparency – shall make the rules and goals of USF clearly defined and enforceable

Sec. 303 Definitions of basic electronic communications services

- 1 year after the Joint Board makes a recommendation, the FCC has one year to decide whether or not to implement the recommendation and must base it on the following considerations:
 - Whether a majority of consumers in an area are subscribing to a service not receiving universal service support
 - The extent to which the high cost service relies on the underlying infrastructure
 - How much support is necessary to ensure that the underlying infrastructure remains available to provide basic service.
- Prohibits the Commission from increasing the amount of total universal service support without Congressional authorization.

Sec. 304 Contribution mechanism

- Requires the FCC to adopt a new contribution mechanism based on phone numbers within 6 mos. after enactment.
- These new rules shall exempt low income households from contributions
- Paging services shall be given discounted contribution rate
- Gives the Commission authority to modify the mechanism to capture bypass by service providers

Sec. 305 Universal service block grant program

- During the 3 years after the date of enactment, the FCC shall revise the USF fund. During this time, no new eligible carriers can be named.
- The FCC shall reform the fund by:
 - Placing a \$3,650,000,000 cap on distribution, adjusted for inflation, population size, and cost in basic communications service.
 - The Commission shall spend 18 months to devise initial guidelines on the distribution of performance-based block grants to the states from the fund.
 - The guidelines shall take into account:
 - § Model distribution mechanisms and regulations for the support of low-income and high cost households
 - § The national performance level measure by household subscription to basic communications services
 - The initial block grants available to a State shall be based on a formula developed by the FCC that take into account affordability, the carrier of last resort, and that will be designed to protect against fraud.
- The States may use Federal USF Funds to:
 - Provide a single connection to all low income and high cost households
 - Support the underlying infrastructure used to provide basic communications services
 - Fund or reimburse eligible common carriers for the provision, maintenance, and upgrading of services of basic communications.
- Unused Funds can be used by States for non-basic communications service or to help fund public safety infrastructure or E-911 systems.
- The FCC may audit a state's use and distribution of federal USF funds and withhold funds for noncompliance with FCC rules.

- The Joint Board may make recommendations to the FCC to modify its guidelines. The FCC has one year to decide to adopt the recommendations or not.

Sec. 306 Waiver authority

- A state may petition the FCC to adopt a different distribution mechanism and the FCC has 90 days to issue a decision. The FCC may grant the waiver only if the petition is consistent with the principles established in section 302.

Sec. 307 State universal service programs not preempted

- States can establish their own universal service programs as long as they are consistent with and not in violation of the principles established by this bill.

Sec. 308 Report to Congress

- Every 3 years the FCC shall report to Congress with:
 - An analysis of the costs and benefits of the USF program
 - A summary of findings from the FCC's audits
 - A summary of best practices employed by the States
 - An evaluation of and recommendations regarding the contribution mechanism established in this bill
 - An analysis on the continuing need for USF support based on the experience of the States and technological and marketplace developments.

TITLE IV – GENERAL PROVISIONS

Sec. 401 Findings and policy regarding allocation of Federal, State, and Local responsibility

- Technological and market forces are changing the nature and delivery of electronic communications services. This has altered the necessary roles for Federal, State and Local regulators.
- As communications services become increasing digital and packet-based, it has become nearly impossible to rely on jurisdictional boundaries as the basis for regulatory responsibility.
- A regulatory regime enforced by multiple jurisdictions, based on differing laws, may result in inconsistent, unpredictable, and onerous rules that inhibit investment, innovation and competition.
- The Telecommunications Act of 1996 did not adopt a framework that addresses fully the challenges posed by the rapid technological and marketplace evolution of electronic communications networks and services
- New statutory guidance is needed to allocate Federal, State, and local responsibility to best regulate communications services
- It shall be the policy of the United States to:
 - Integrate Federal, State, and local regulation of communications networks
 - All communications shall be governed by a single, unified minimally pervasive regulatory regime determined and generally implemented at the Federal level

- To eliminate rate regulation and rate-setting where market conditions adequately protect the interests of consumers
- Eliminate regulations based on technology distinctions
- Avoid extending legacy regulation to additional services, networks or providers
- To create incentives to invest in new technologies and to encourage the deployment of advanced communications services.

Sec. 402 Rulemaking and delegation of authority

- Unless delegated, the FCC shall have exclusive authority to adopt or enforce rules related to this Act
- The FCC may delegate, and a state or any subdivision of a State may accept, authority to enforce any rules, regulations or obligations under this Act or to adjudicate disputes between providers of communications services that relate to rules established under this Act.
- A state or political subdivision may petition the FCC to clarify the scope of a delegation or authority or obtain a waiver from limitations on such delegation. The FCC has 90 days to respond to such petition.

Sec. 403 Judicial Review of decisions

- Decisions may be appealed to the United States Court of Appeals for the District of Columbia.

Sec. 404 Right-of-way authority

- All communications service providers shall be authorized to construct or operate an electronic communications network over public rights-of-way and through easements as long as it would not affect the safety, function or appearance of the property, the convenience and safety of any person who has a right to use such easement and the cost of the installation is born by the provider. The owner of the easement must be justly compensated.

Sec. 405 State regulation of basic local rates

- States may regulate the rates for basic stand-alone local service if prior to the passage of this Act the service was:
 - Universal service, offered separately from any other services to customers who are not providers of electronic communications service
- States may not regulate any ancillary or vertical services offered in connection with the provision of basic stand-alone local service
- Retail or end-user services are to be unregulated
- Any interested party may petition a state to eliminate existing state regulations grandfathered in this Act. The state has 270 days to issue a decision based on whether the regulation satisfies the requirements of subsection (a) and why the economic benefits of such regulation outweigh the economic harms of such regulation.

- These may be appealed to the FCC, where they must be reviewed within 180 days.

Sec. 406 Retention of additional State authority

- States retain the authority to prohibit unfair or deceptive acts or practices that would negatively affect consumers, to protect the public safety and homeland security, and to manage public rights of ways.

Sec. 407 Preemption of State authority

- This act supersedes any provision of a state law relating to communications services

Sec. 408 Transition and sunset of existing agreements

- Those in existing franchise agreements at the date of enactment of this Act shall be exempt from this act until either (1) the date of expiration of the franchise agreement or (2) 4 years after the date of enactment of this Act, whichever is earlier.
- Franchise agreements prohibited beyond this point.
- Until the franchise agreement is terminated, a State or political subdivision, may require a competing video service provider to contribute an equitable portion of the costs associated with any fees directly attributable to such agreement and public access channels required by such agreement.

Sec. 409 Effective date.

- Unless otherwise stated, the provisions in this Act shall take effect 2 years after the date of enactment.